

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FILED
CLERK'S OFFICE

CIVIL ACTION NO. 04CV11023-RCL 22 P 2:28

LEON ROBINSON,
Plaintiff

v.

THOMAS MENINO, PAUL F.
EVANS, JAMES WYSE,
MICHAEL PRIMM, JOHN A.
MARTEL, WAYNE ROCK,
GARRETT MITCHELL,
CHARLES HARDY, AMERICAN
BROADCASTING CO., INC.,
HEARST-ARGYLE STATION
INC., WCVB TV (Channel 5,
Boston) DENNIS MCCARTHY
AND JOHN DOE I,
Defendants

U.S. DISTRICT COURT
DISTRICT OF MASS.

MOTION FOR FRANKS/AMRAL HEARING
REGARDING TO THE SEARCH OF THE PLAINTIFF'S APARTMENT
(Memorandum Incorporated)

Now Comes plaintiff Leon Robinson, who respectfully files this Motion for Franks/Amral hearing regarding the search of his apartment and his previously filed Oposition to the Defendant's Motion to Dismiss the plaintiff's Complaint.

Plaintiff also moves this Honorable Court to hold (ALL) of the Defendant(S) in violation of all counts in the plaintiff's Complaint against all of the above defendants as they had searched and seized property from the Plaintiff's aparment located at 27 Spring Street in West Roxbury, MA pursuant to Article XIV of the Massachusetts Declaration of Rights and the Fourth Amedment to the United States Constitution.

As grounds for this request, plaintiff states the following:

1. The Boston Police claim that they obtained a warrant to search Mr. Robinson's apartment in the early morning hours (approximately **3:15 a.m.**) of February 22, 2001. See Unsigned Warrant attached as Exhibit 1. While the warrant was unsigned when the Boston Police, and ABC News personals conducted the search, a Housing Court Judge has supplied an Affidavit stating that she had reviewed the documents and had actually approved the issuance of the warrant, but had inadvertently failed to affix her signature. See Affidavit attached as Exhibit 2. This Judge also stated in her Affidavit that the Boston Police came to her (residence) in the early morning hours of February 22, 2001. Exhibit 2.

2. The plaintiff, Leon Robinson has previously supplied an Affidavit stating that the Boston Police obtained his Keys from his person on February 21, 2001 at approximately **10:30 p.m.** and proceeded to his apartment. See Affidavit of the Plaintiff, Leon Robinson attached as Exhibit 3.

3. On information and belief, plaintiff submits that the Boston Police actually entered the apartment with ABC News within a few minutes of Mr. Robinson's arrest. Plaintiff also submits that the Boston Police began searching the apartment and began videotaping its contents well in advance of the time when the Judge approved its issuance almost **4½** hours later. See Exhibit 1 and 2.

This entry, search and taping all have occurred in violation of plaintiff's Fourth Amendment and Article XIV rights to remain free of unreasonable warrantless searches. See M.G.L. c. 276, sec 1, et seq.

4. Plaintiff now has evidence that the Boston Police informed the Boston Housing Authority (BHA) that they had A search warrant at approximately 10:37 p.m. on February 21, 2001.

See BHA Records attached as Exhibit 4. The message from the Boston Police, which was retrieved by the maintenance custodian at 10:44 p.m. on February 21st stated: "Meet them their tonite, has a search warrant. Don't want to kick the door in." See BHA Phone Message record attached as Exhibit 5.

5. On information and belief, the apartment complex custodian immediately proceeded to Mr. Robinson's apartment upon retrieving the message and found the Boston Police already inside the apartment rummaging about and using a video camera to document the its contents. See Exhibit 4. He left Mr Robinson's apartment shortly thereafter. Exhibit 4.

6. °It is generally accepted that warrantless searches "are per se unreasonable unless they fall within one of the few narrowly drawn exceptions to the Fourth Amendment warrant requirements."

The Defendant(S) denies that they videotaped the contents of the apartment of even possessed a video recorder at the crime scene, and at Mr. Robinson's arrest as well at his apartment.

Commonwealth v. Amral, 16 Mass. App. Ct. 230, 450 N.E.2d 656, 658 (1983). The Defendants has the burden of proving the legality of a warrantless search and that the particular search falls within "a narrow class of permissible exceptions." Commonwealth v. Forde, 367 Mass. 798, 800 (1975); See Commonwealth v. Pignone, 332 NE.2d 388, 391 (1970); See United States v. Lewis, 816 F.Supp. 789 (D.C.Mass. 1993).

"Warrantless searches are presumptively unreasonable."

See M.G.L.A. 276 § 2A, Form of Search Warrant attached as Exhibit 6., pages 1,2 and 3.

The Defendant(S) cannot sustain its burden of demonstrating that this warrantless search was permissible given the facts of this case.

7. Based upon the above and the opposition motion previously filed, plaintiff moves this Court to find that the defendants are in violations, and to allow Judgement against the Defendants, and/or allow this case to move forward to trial. Also, the plaintiff respectfully request all of his property seized be returned and observations made by the Boston Police because they engaged in an illegal warrantless search of Mr. Robinson's apartment. Any evidence later seized as a result of the "bogus warrant and illegal search is also tainted by this conduct and must be Ordered Judgement upon the Defendants and Sanction² them pursuant to the fruit of the poisonous tree doctrine. See Wong Sun v. United States, 371 U.S. 471 (1964) As the Defendant(S) bears the burden of demonstrating that the search was legal,

Plaintiff, Leon Robinson, moves this Court to conduct an full Evidentiary Hearing for the reasons stated above.

8. Furthermore, under a Franks/Amral analysis, plaintiff has made a substantial showing that the Boston Police engaged in substantial wrongdoing and/or made false statements intentionally in the Affidavits for the search warrant and to this Court and Judge who issued the warrant. See Franks v. Delaware, 438 U.S. 154,

²This is not the first time that the Detective have engaged in nefarious behavior in this case. Judge Hines already ruled that the police withheld an exculpatory 911 tape without any explanation for almost 15 months. See Judge Hine's Order on docket sheet. This tape contained a telephone call from a witness who gave a description of the shooter that was completely different from the appearance of Mr. Robinson. Despite the the shenanigans by law enforcement, plaintiff was abl to interview this witness sometime in late 2002. The witness ruled Mr. Robinson out as the Shooter. Exhibit 4.

155-156 (1978) There is no doubt that such omissions or wrongdoing by the Boston Police would undo or undermine the credibility of the affiant in this case requiring judgement in faver of the plaintiff. Specifically, plaintiff submits that the Boston Police failed to inform the issuing Judge that they had already been in the apart- ment, had videotaped its contents and had already been in the aparment, had videotaped its contents and had identified items that they wanted to seize. If this Judge had known that the police had mis-information in the Affidavit for the warrant and had already engaged in an illegal entry and search, she might have decided not to issue the warrant.

Additionally,

the failure of the Boston Police to alert the Judge to these facts undermines the Defendant's credibility and must result in Judgement in favor of the plaintiff, Leon Robinson, and allow this Civil Action move forward to trial.

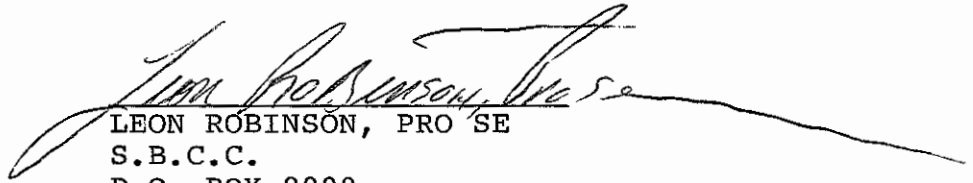
Specifically, plaintiff submits that the police failed to inform the issuing Judge further information about the Affidavit that did not have any of the right information within, there were two affidavits and the issuing Judge seen did not know that the supporting affidavit for the warrant had wrong information.

See Amral. See Commonwealth v. Amral, 407 Mass. 511, 522 (1990) (if conduct of police undermine credibility or reliability of affiant, then Judgement should be granted in favor of the plaintiff, Leon Robinson) and United States v. Flowers, 336 F3d 1222, (10th Cir. 2003), states that police are not free to create exigencies to justify warrantless intrusions into homes.

Therefore, Plaintiff is entitled to an evidentiary hearing so the Court can conduct a Franks/Amral hearing.

Wherefore, Plaintiff requests that this Honorable Court grant plaintiff an evidentiary hearing and then allow this case to move forward to trial, as it is noted that the warrant was not signed, and the supporting affidavit for the warrant did not have any of the right information that would allow the police to go to the plaintiff's apartment and seized proerty during the search of 27 Spring Street, Apt. 53 in West Roxbury and the Defendant(S) Should be held in violation for the foregoing reasons.

Respectfully Submitted,
BY THE PLAINTIFF,


LEON ROBINSON, PRO SE
S.B.C.C.
P.O. BOX 8000
SHIRLEY, MA 01464

CERTIFICATE OF SERVICE

I, Leon Robinson, do hereby certify that I served a copy of this document upon All of the Defendant(S) Attorney(S) of records on this 19th day of September, 2005, by first class prepaid postage to all parties in this civil action.

DATE: 9/19/05


LEON ROBINSON, PLAINTIFF, W-85592

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Exh. B.T
3-

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AFFIDAVIT OF THE PLAINTIFF LEON ROBINSON

I, Leon Robinson, do state and depose that:

1. My true name is Leon Robinson and I am presently incarcerated in Souza Baranowski Prison in Shirley, MA. I live at 27 Spring Street, Apt. 53, West Roxbury, MA when the Boston Police searched it pursuant to a un-signed warrant in this case in February 2001. I had an expectation of privacy in this apartment at all relevant times described in the warrant and attached affidavits for the search conducted on my apartment.

2. On February 21, 2001, I turned my self in to the Boston Police and I was arrested, as I had met with them at a store on the street in West Roxbury. They told me that I was under arrest for the shooting of Ricardo Robinson.

3. They placed me in cuffs and brought me to the police station. At some point I was booked and processed.

4. More then an houn after arriving at the station, the detectives asked me if I wanted to say anything. As they told me that I could help myself if I spoke with them, I agreed to give a statement. I would have like to call a family member or lawyer but did not understand that I could use their telephones to do so. While I knew that I had a right to a lawyer, I thought would have to wait until I got to court the next day. I was feeling pressured to speak given that I was alone and did not understand that I could call someone to discuss my options.

5. At no time prior to giving this statement, did the Boston Police inform me that I could call a friend, family member or a lawyer.

6. I gave the police a statement and then, sometime into my statement, they asked if I could speak with anyone who could verify where I was that night. They then asked me to call that person which I did.

7. Although I was permitted to make this call, I had already spoken to the police at length and believed that I had to continue. If I had known prior to giving this statement that I had a Right to call a lawyer or family member to discuss my options, I would never have spoken to the Boston Police that night.

8. The police took my Keys, and my Jacket after I was arrested without my consent. At this date and time year 2005, the Boston Police still have my House Keys and other items.

Signed under pain and penalties, on this 10th day of September, 2005.

Respectfully Submitted,

LEON ROBINSON, W-85592
S.B.C.C.
P.O. BOX 8000
SHIRLEY, MA 01464

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EXHIBIT
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BUSINESS & PROFESSIONAL EXCHANGE, INC.
24 Hour Telephone Answering & Inbound Call Center Services
100 CUMMINGS CENTER SUITE 344C
BEVERLY, MA 01915
978-232-8950 / 800-649-6767
Fax Telephone 978-232-8952

April 18, 2003

VIA FAX - 617-338-9538
James Budreau, Esquire
20 Park Plaza Suite 905
Boston, MA 02116

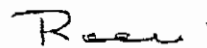
Dear Attorney Budreau:

Re: Subpoena Of Records
Boston Housing Authority
February 21, 2001-February 22, 2001

In accordance with the subpoena request, please find an excerpt from our message logs for the Boston Housing Authority above dates.

If you have any questions, you may contact me.

Very truly yours,



Raymond P. Shaw Jr.
General Manager

RPS/r

Copy To File

Client ID: 654

Archived Messages

Printed at: 5:30a Fri Mar-21

Page: 1

In: 1:15p We Mar-07 '01 SSS qqq
 Out: 1:15p We Mar-07 '01 SSS 0:13
 For:
 From:
 Tel# w/area:
 Adr:
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 * 1:15p We Mar-07 SSS NC INFO
 Dispatch Emerg Calls Y/N::
 FMDS:0654:
 Caller Id: (617)254-0921

In: 1:06p We Mar-07 '01 DMS qqq
 Out: 1:06p We Mar-07 '01 DMS 0:01
 For:
 From:
 Tel# w/area:
 Adr:
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 * 1:06p We Mar-07 DMS NC INFO
 Dispatch Emerg Calls Y/N::
 FMDS:0654:
 Caller Id:

In: 12:49p We Mar-07 '01 LMS qqq
 Out: 12:57p We Mar-07 '01 DMS JAV 1:06
 For: JAVIER
 From: WILLIAM OBRIAN CALLING
 Tel# w/area: FOR MR MULHEARN IN APT 6
 Adr: 35 SPRING ST
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob: LOCKED HIMSELF OUT OF APT
 *12:50p We Mar-07 LMS TO PAGE
 Dispatch Emerg Calls Y/N::
 FMDS:0654:
 Caller Id: (617)325-6866

In: 8:48a We Mar-07 '01 SSS qqq
 Out: 9:05a We Mar-07 '01 act r/p 2:28
 For: OFFICE
 From: KEVIN MOHONEY
 Tel# w/area: 327 3327.
 Adr: 53 WASHINGTON ST
 Unit #: 12
 May Maint Enter Your Apt?: //
 Msg/Prob: PLS CALL RE: SNOW PLOWING
 Dispatch Emerg Calls Y/N:: YES
 FMDS:0654:
 Caller Id: (617)469-9039

In: 7:29a Tu Mar-06 '01 RPS qqq
 Out: 7:30a Tu Mar-06 '01 RPS 0:39
 For:
 From: PAM
 Tel# w/area:
 Adr:
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 * 7:30a Tu Mar-06 RPS NC INFO
 Dispatch Emerg Calls Y/N::
 FMDS:0654:
 Caller Id: (781)326-4479

In: 8:36a Mo Mar-05 '01 SGS qqq
 Out: 9:07a Mo Mar-05 '01 act r/p 0:49
 For: LESLIE
 From: SONIA
 Tel# w/area:
 Adr: WONT BE IN TODAY
 Unit #:
 May Maint Enter Your Apt?: N
 Msg/Prob:
 Dispatch Emerg Calls Y/N:: N
 FMDS:0654:
 Caller Id:

In: 4:41p Sa Mar-03 '01 PAL qqq
 Out: 9:07a Mo Mar-05 '01 act r/p 12:42
 For: HOLD PER JAVIER *SEE BELOW*
 From: MRS. HAMILTON
 Tel# w/area: 617 327 6846
 Adr: 32 TEMPLE STEET
 Unit #: 3
 May Maint Enter Your Apt?: YES
 Msg/Prob: DOWNSTAIRS TENANT IS CAUSING
 A PROB WITH EVERYONE IN THE BUILDING
 * 5:03p Sa Mar-03 JEH TO PAGE
 Dispatch Emerg Calls Y/N:: /
 FMDS:0654:
 Caller Id: (617)327-6846
 5:04p Sa Mar-03 JEH CALLED AGAIN
 * 5:04p Sa Mar-03 JEH TO PAGE
 5:12p Sa Mar-03 SMA THERE IS NOTHING
 MAINTENANCE CAN DO. THEY NEED TO CALL
 BACK ON MONDAY TO SPEAK WITH THE
 OFFICE MANAGER.

In: 5:05p Sa Mar-03 '01 TRN qqq
 Out: 5:07p Sa Mar-03 '01 TRN 2:31
 For:
 From:
 Tel# w/area:
 Adr:
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 * 5:07p Sa Mar-03 TRN NC INFO
 Dispatch Emerg Calls Y/N::
 FMDS:0654:
 Caller Id: (617)327-6846

In: 4:39p Fr Mar-02 '01 SGS qqq
 Out: 4:43p Fr Mar-02 '01 CAM JOS 1:36
 For: JOSE
 From: LESLIE (MANAGER)
 Tel# w/area:
 Adr: SPRING ST APT
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob: CLEAN UP WATER IN MENS ROOM
 JAVIER IS NOT THERE RIGHT NOW
 * 4:41p Fr Mar-02 SGS TO PAGE
 Dispatch Emerg Calls Y/N::
 FMDS:0654:
 Caller Id: (617)549-0616

Client ID: 654 Archived Messages Printed at: 5:30a Fri Mar-21 Page: 2

In: 4:39p Fr Mar-02 '01 SGS qqq
 Out: 4:39p Fr Mar-02 '01 SGS 00 0:04
 Tel# w/area:
 ADR:
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 * 4:39p Fr Mar-02 SGS NC INFO
 Dispatch Emerg Calls Y/N:
 FMDS:0654:
 Caller Id: (617)549-0616

In: 2:35p Fr Mar-02 '01 LMB qqq
 Out: 3:26p Fr Mar-02 '01 WJW 0:57
 For: JAVIER
 From: A/S SERVICE
 Tel# w/area:
 ADR: SEE MSG IN BOX 649
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 * 2:35p Fr Mar-02 LMB TO PAGE
 * 3:10p Fr Mar-02 LMB TO PAGE
 Dispatch Emerg Calls Y/N: Y
 FMDS:0654:
 Caller Id:

In: 1:08p Fr Mar-02 '01 MLJ qqq
 Out: 3:19p Fr Mar-02 '01 CAM OFC 0:47
 For: DFS
 From: ILENE ROMAYNE
 Tel# w/area: 617 469 4967
 ADR: PLEASE CALL RE: LOOKING FOR
 Unit #: APPLICATION
 May Maint Enter Your Apt?: YES
 Msg/Prob:
 Dispatch Emerg Calls Y/N: N
 FMDS:0654:
 Caller Id: (617)469-4967

In: 2:01p Fr Mar-02 '01 MC qqq
 Out: 2:01p Fr Mar-02 '01 MC 0:08
 For:
 From:
 Tel# w/area:
 ADR:
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 * 2:01p Fr Mar-02 MC *NC H/UP
 Dispatch Emerg Calls Y/N:
 FMDS:0654:
 Caller Id: (617)988-5167

In: 1:03p Fr Mar-02 '01 LMS qqq
 Out: 1:03p Fr Mar-02 '01 LMS 0:08
 For:
 From:
 Tel# w/area:
 ADR:
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 * 1:03p Fr Mar-02 LMS NC INFO
 Dispatch Emerg Calls Y/N:
 FMDS:0654:
 Caller Id: (617)319-3851

In: 2:45p Th Mar-01 '01 TMC qqq
 Out: 9:05a Fr Mar-02 '01 act r/p 1:27
 For: LESLIE/DFC
 From: BILL O'BRIAN
 Tel# w/area: 617 325 6866
 ADR: 35 SPRING ST
 Unit #: 7
 May Maint Enter Your Apt?: Y
 Msg/Prob: PLS CALL RE: TOILET, NO
 OTHER MESSAGE LEFT
 Dispatch Emerg Calls Y/N: N
 FMDS:0654:
 Caller Id: (617)325-6866

In: 3:09p Th Mar-01 '01 CJK qqq
 Out: 3:09p Th Mar-01 '01 CJK 0:21
 For:
 From:
 Tel# w/area:
 ADR:
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 * 3:09p Th Mar-01 CJK WCB/NMSS
 Dispatch Emerg Calls Y/N:
 FMDS:0654:
 Caller Id: (617)296-9875

In: 1:55p We Feb-28 '01 CAM qqq
 Out: 9:06a Th Mar-01 '01 act r/p 1:20
 For: LESLIE
 From: TERE COCHAN
 Tel# w/area: 617 288 5630 AFTER 4PM
 ADR:
 Unit #:
 May Maint Enter Your Apt?: NO
 Msg/Prob: INTERESTED IN RENTING A TWO
 BEDROOM APT PLS CALL
 Dispatch Emerg Calls Y/N: NO
 FMDS:0654:
 Caller Id:

In: 1:51p We Feb-28 '01 CJK qqq
 Out: 9:06a Th Mar-01 '01 act r/p 1:36
 For: LESLIE
 From: JOANNE CASH
 Tel# w/area: 617 469 8744
 ADR: 1 CLIFFMONT ST
 Unit #: 107
 May Maint Enter Your Apt?: /
 Msg/Prob: GOING TO FOSNIER HOSP. PLS
 CALL
 Dispatch Emerg Calls Y/N: /
 FMDS:0654:
 Caller Id: (617)469-8744

Client ID: 654

Archived Messages

Printed at: 5:30a Fri Mar-21

Page: 3

In: 8:47a Th Mar-01 '01 MC qqq
 Out: 8:47a Th Mar-01 '01 MC 0:04
 For:
 From:
 Tel# w/area:
 ADR:
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 * 8:47a Th Mar-01 MC NC INFO
 Dispatch Emerg Calls Y/N::
 FMS:0654:
 Caller Id: (617)469-1569

In: 8:28a Th Mar-01 '01 WJW qqq
 Out: 8:28a Th Mar-01 '01 WJW 0:04
 For:
 From:
 Tel# w/area:
 ADR:
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 * 8:28a Th Mar-01 WJW #NC H/UP
 Dispatch Emerg Calls Y/N::
 FMS:0654:
 Caller Id: (617)988-5180

In: 8:09a Th Mar-01 '01 MLJ qqq
 Out: 8:10a Th Mar-01 '01 MLJ 0:27
 For:
 From:
 Tel# w/area:
 ADR:
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 * 8:10a Th Mar-01 MLJ WCB/NMSG
 Dispatch Emerg Calls Y/N::
 FMS:0654:
 Caller Id: (617)988-5180

In: 2:06p We Feb-28 '01 MC qqq
 Out: 2:06p We Feb-28 '01 MC 0:09
 For:
 From:
 Tel# w/area:
 ADR:
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 * 2:06p We Feb-28 MC NC INFO
 Dispatch Emerg Calls Y/N::
 FMS:0654:
 Caller Id: (617)957-4155

In: 1:56p We Feb-28 '01 TMC qqq
 Out: 1:57p We Feb-28 '01 TMC 0:08
 For:
 From:
 Tel# w/area:
 ADR:
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 * 1:57p We Feb-28 TMC NC INFO
 Dispatch Emerg Calls Y/N::
 FMS:0654:
 Caller Id: (617)988-5340

In: 1:28p We Feb-28 '01 CJK qqq
 Out: 1:28p We Feb-28 '01 CJK 0:10
 For:
 From:
 Tel# w/area:
 ADR:
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 * 1:28p We Feb-28 CJK WCB/NMSG
 Dispatch Emerg Calls Y/N::
 FMS:0654:
 Caller Id: (617)327-0356

In: 1:14p We Feb-28 '01 CB qqq
 Out: 1:14p We Feb-28 '01 CB 0:13
 For:
 From:
 Tel# w/area:
 ADR:
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 * 1:14p We Feb-28 CB NC INFO
 Dispatch Emerg Calls Y/N::
 FMS:0654:
 Caller Id:

In: 8:10a We Feb-28 '01 TDM qqq
 Out: 8:10a We Feb-28 '01 TDM 0:05
 For:
 From:
 Tel# w/area:
 ADR:
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 * 8:10a We Feb-28 TDM #NC H/UP
 Dispatch Emerg Calls Y/N::
 FMS:0654:
 Caller Id: (617)988-3420

In: 5:54p Tu Feb-27 '01 BLS qqq
 Out: 5:54p Tu Feb-27 '01 BLS 0:13
 For:
 From:
 Tel# w/area:
 ADR:
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 * 5:54p Tu Feb-27 BLS NC INFO
 Dispatch Emerg Calls Y/N::
 FMS:0654:
 Caller Id: (617)469-4967

Client ID: 654 Archived Messages Printed at: 5:30a Fri Mar-21 Page: 4

In: 4:23p Tu Feb-27 '01 TMC qqq
 Out: 4:23p Tu Feb-27 '01 TMC 0:06
 For:
 From:
 Tel# w/area:
 Adr:
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 * 4:23p Tu Feb-27 TMC &NC H/UP
 Dispatch Emerg Calls Y/N::
 FMS:0654:
 Caller Id: (617)988-5117

In: 2:08p Su Feb-25 '01 YE qqq
 Out: 2:19p Su Feb-25 '01 SMA ONC 6:19
 For: ON CALL
 From: MARY ELLEN SAMBON
 Tel# w/area: 617 469 9382
 Adr: 1 CLIFFMONT ST, ROSLINDALE
 Unit #: APT 103
 May Maint Enter Your Apt?: Y
 Msg/Prob: HAVING PROBLEMS WITH THE
 FREEZER, DOESN'T KEEP THINGS FROZEN AND
 HAD TO THROW SOME MEATS AWAY. SHE ALSO
 CAN'T PUT THE SAFETY LOCK ON THE
 OUTSIDE GATE.
 * 2:12p Su Feb-25 YE TO PAGE
 Dispatch Emerg Calls Y/N:: Y
 FMS:0654:
 Caller Id: (617)469-9382

In: 10:17a Su Feb-25 '01 SSS qqq
 Out: 10:18a Su Feb-25 '01 SSS 1:10
 For:
 From:
 Tel# w/area:
 Adr:
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 * 10:18a Su Feb-25 SSS NC INFO
 Dispatch Emerg Calls Y/N::
 FMS:0654:
 Caller Id:

In: 9:23a Su Feb-25 '01 KAP qqq
 Out: 9:28a Su Feb-25 '01 KAP JAV 2:34
 For: JAVIER
 From: REFUSED
 Tel# w/area: REFUSED
 Adr: 32 TEMPLE
 Unit #: THINKS ITS APT 99
 May Maint Enter Your Apt?: N/A
 Msg/Prob: SMOKE ALARM GOING OFF
 FOR AWHILE
 * 9:25a Su Feb-25 KAP TO PAGE
 Dispatch Emerg Calls Y/N:: Y
 FMS:0654:
 Caller Id:

In: 1:54p Fr Feb-23 '01 KFH qqq
 Out: 1:55p Fr Feb-23 '01 KFH 0:28
 For:
 From:
 Tel# w/area:
 Adr:
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 * 1:55p Fr Feb-23 KFH NC INFO
 Dispatch Emerg Calls Y/N::
 FMS:0654:
 Caller Id:

In: 1:33p Fr Feb-23 '01 TDM qqq
 Out: 1:37p Fr Feb-23 '01 WJW-LES 1:46
 For: LESLIE JOHNSON
 From: SST. JAMES WYSE @ BOSTON P.D.
 Tel# w/area: HOMICIDE UNIT / 617 342
 Adr: 4470 / SAID THAT YOU CAN SECURE
 Unit #: THE APT. AT 27 SPRING ST. THEY
 May Maint Enter Your Apt?: ARE /
 Msg/Prob: COMPLETED AT THAT ADDRESS.
 * 1:35p Fr Feb-23 TDM TO PAGE T/O
 Dispatch Emerg Calls Y/N:: Y
 FMS:0654:
 Caller Id: (617)282-8081

In: 2:40p Th Feb-22 '01 CMB qqq
 Out: 9:05a Fr Feb-23 '01 act r/p 3:42
 For: MS. JOHNSON
 From: LUZ ROOMS
 Tel# w/area: 508 584 5765
 Adr: HECTOR ROMAN LIVES @ SPRING ST
 Unit #: APT MAIL RENT @ FEB 3 RECIEVED
 May Maint Enter Your Apt?: LETTER ON
 Msg/Prob: THE 16TH SAYING TO MAIL RENT
 IT ALREADY GOT MAIL & WOULD LIKE A
 CALL RE: LETTER. HAS MONEY ORDER COPY @
 Dispatch Emerg Calls Y/N:: HOUSE
 FMS:0654:
 Caller Id:

In: 8:16a Fr Feb-23 '01 WJW qqq
 Out: 8:16a Fr Feb-23 '01 WJW 0:10
 For:
 From:
 Tel# w/area:
 Adr:
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 * 8:16a Fr Feb-23 WJW WCB/NMSG
 Dispatch Emerg Calls Y/N::
 FMS:0654:
 Caller Id: (617)234-1948

In: 10:37a Th Feb-22 '01 MCB qqq
 Out: 2:02p Th Feb-22 '01 CB r/p 1:13
 For: LESLIE/MANAGER
 From: DT. MARTEL
 Tel# w/area: 617 775 8459
 Adr: PLEASE CALL RE: SEARCH WARRANT ON
 Unit #: YOUR PROPERTY
 May Maint Enter Your Apt?: N
 Msg/Prob:
 Dispatch Emerg Calls Y/N:: N
 FMS:0654:
 Caller Id:

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EXHIBIT
5.

1

Client-ID: 654

Archived Messages

Printed at: 5:30a Fri Mar-21

Page: 5

In: 10:29a Th Feb-22 '01 SLC qqq
 Out: 10:30a Th Feb-22 '01 SLC 0:51
 For:
 From:
 Tel# w/area:
 Adr:
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 *10:30a Th Feb-22 SLC NC INFO
 Dispatch Emerg Calls Y/N::
 FMDS:0654:
 Caller Id: (781)407-2142

In: 10:15a Th Feb-22 '01 TDM qqq
 Out: 10:15a Th Feb-22 '01 TDM 0:13
 For:
 From:
 Tel# w/area:
 Adr:
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 *10:15a Th Feb-22 TDM NC INFO
 Dispatch Emerg Calls Y/N::
 FMDS:0654:
 Caller Id: (617)323-4561

In: 10:01a Th Feb-22 '01 TDM qqq
 Out: 10:01a Th Feb-22 '01 TDM 0:07
 For:
 From:
 Tel# w/area:
 Adr:
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 *10:01a Th Feb-22 TDM *NC H/UP
 Dispatch Emerg Calls Y/N::
 FMDS:0654:
 Caller Id: (617)988-5337

In: 9:31a Th Feb-22 '01 SLC qqq
 Out: 9:59a Th Feb-22 '01 TDM JAV 7:39
 For: JAVIER
 From: PATRICK MCCARTHY
 Tel# w/area: 617 325 6515
 Adr: 32 TEMPLE ST
 Unit #: 101
 May Maint Enter Your Apt?:
 Msg/Prob: HIS DOOR WILL NOT LOCK
 PLEASE CALL
 * 9:40a Th Feb-22 SLC DP PAGE
 Dispatch Emerg Calls Y/N::
 FMDS:0654:
 Caller Id: (617)325-6515
 * 9:50a Th Feb-22 TDM TO PAGE T/O

In: 9:26a Th Feb-22 '01 SLC qqq
 Out: 9:26a Th Feb-22 '01 SLC 0:09
 For:
 From:
 Tel# w/area:
 Adr:
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 * 9:26a Th Feb-22 SLC *NC H/UP
 Dispatch Emerg Calls Y/N::
 FMDS:0654:
 Caller Id: (617)988-5383

In: 10:37p We Feb-21 '01 AMJ qqq
 Out: 10:44p We Feb-21 '01 AMJ DNC 3:57
 For:
 From: BOSTON POLICE DEPT
 Tel# w/area: 617 775 8459
 Adr: 27 SPRING ST
 Unit #: S3
 May Maint Enter Your Apt?:
 Msg/Prob: MEET THEM THERE TONITE
 HAS A SEARCH WARRANT DONT WANT TO KICK
 THE DOOR DOWN
 Dispatch Emerg Calls Y/N:: A
 FMDS:0654:
 Caller Id:
 *10:41p We Feb-21 AMJ DP PAGE

In: 4:41p We Feb-21 '01 BLS qqq
 Out: 4:41p We Feb-21 '01 BLS 0:38
 For:
 From:
 Tel# w/area:
 Adr:
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 * 4:41p We Feb-21 BLS NC INFO
 Dispatch Emerg Calls Y/N::
 FMDS:0654:
 Caller Id: (508)472-1154

In: 1:57p We Feb-21 '01 MLJ qqq
 Out: 2:04p We Feb-21 '01 CMB OFC 2:45
 For: LESLIE JOHNSON
 From: FLORENCE SCOTT
 Tel# w/area: 617 469 9047
 Adr: 36 TEMPLE ST /WEST ROXBURY
 Unit #: 66
 May Maint Enter Your Apt?: YES
 Msg/Prob: PLEASE CALL RE:SMOKE FIRE
 WALLS ARE ALL SMOKEY AND CEILING
 * 2:00p We Feb-21 MLJ TO PAGE T/O
 Dispatch Emerg Calls Y/N:: Y
 FMDS:0654:
 Caller Id: (617)469-9047

In: 1:48p We Feb-21 '01 CAM qqq
 Out: 1:48p We Feb-21 '01 CAM 0:10
 For:
 From:
 Tel# w/area:
 Adr:
 Unit #:
 May Maint Enter Your Apt?:
 Msg/Prob:
 * 1:48p We Feb-21 CAM NC INFO
 Dispatch Emerg Calls Y/N::
 FMDS:0654:
 Caller Id: (617)988-5116

6

EXHIBIT
6-

6

*88781 M.G.L.A. 276 § 2A

MASSACHUSETTS GENERAL LAWS
 ANNOTATED
 PART IV. CRIMES, PUNISHMENTS
 AND PROCEEDINGS IN CRIMINAL
 CASES
 TITLE II. PROCEEDINGS IN
 CRIMINAL CASES
 CHAPTER 276. SEARCH
 WARRANTS, REWARDS, FUGITIVES
 FROM JUSTICE, ARREST,
 EXAMINATION, COMMITMENT
 AND BAIL. PROBATION OFFICERS
 AND BOARD OF PROBATION
 SEARCH WARRANTS

*Current through Ch. 20 of the 2005 1st Annual
 Sess.*

§ 2A. Form of warrant

The warrant shall be in substantially the following form:

THE COMMONWEALTH OF
 MASSACHUSETTS.

(COUNTY), ss.

(NAME) COURT.

To the Sheriffs of our several counties, or their deputies, any State Police Officer, or any Constable or Police Officer of any city or town, within our said Commonwealth.

Proof by affidavit having been made this day before (name of person authorized to issue warrant) by (names of person or persons whose affidavits have been taken) that there is probable cause for believing that (certain property has been stolen, embezzled, or obtained by false pretenses; certain property is intended for use or has been used as the means of committing a crime; certain property has been concealed to prevent a crime from being discovered; certain property is unlawfully possessed or kept or concealed for an unlawful purpose).

We therefore command you in the daytime (or at any time of the day or night) to make an

immediate search of (identify premises) (occupied by A.B.) and (of the person of A.B.) and of any person present who may be found to have such property in his possession or under his control or to whom such property may have been delivered, for the following property:

(description of property)

and if you find any such property or any part thereof to bring it and the persons in whose possession it is found before (court having jurisdiction) at (name of court and location).

Dated at (city or town) this day of,
 (insert year).

Clerk.

CREDIT(S)

*Added by St.1964, c. 557, § 3. Amended by St.1998, c. 463,
 § 191.*

<General Materials (GM) - References,
 Annotations, or Tables>

*88782

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

2004 Main Volume

St.1964, c. 557 § 3, was approved June 16, 1964. Emergency declaration by the Governor was filed June 23, 1964.

St.1998, c. 463, § 191, an emergency act, approved Jan. 14, 1999, a corrections bill, substituted "(insert year)" for "19 ".

REFERENCES

LAW REVIEW AND JOURNAL
COMMENTARIES

Illegal search and seizure. Walter H. McLaughlin, Jr., 13 Ann.Surv.Mass.L. 373 (1966).

Reasonable scope of search warrants for premises: First circuit, 1973-1974 term. (1975) 9 Suffolk U.L.Rev. 643.

Search warrants. Reuben Goodman, 13 Ann.Surv.Mass.L. 159 (1966)

LIBRARY REFERENCES

2004 Main Volume

Controlled Substances ☞ 141.
 Searches and Seizures ☞ 123.
 Westlaw Topic Nos. 349, 96H.
 C.J.S. Searches and Seizures §§ 129 to 130, 148, 173 to 174.

RESEARCH REFERENCES

ALR Library

2002 ALR 5th 18, Delay in Execution of Search Warrant as Affecting Admissibility of Evidence Seized Under Warrant.

Treatises and Practice Aids

30 Mass. Prac. Series § 184, The Contents of the Affidavit.

30 Mass. Prac. Series § 236, Time that Search Warrant Must be Served.

42 Mass. Prac. Series § 5.12, Staleness.

14A Mass. Prac. Series § 9.31, Search Pursuant to Warrant-Generally.

14A Mass. Prac. Series § 9.41, Description of Place to be Searched.

14A Mass. Prac. Series § 9.42, Description of Persons to be Searched.

*88783 14A Mass. Prac. Series § 9.44, Execution of Warrant.

17B Mass. Prac. Series § 52.82, Constitutional Defenses-Illegal Search and Seizure-Search Under a Warrant.

ANNOTATIONS

NOTES OF DECISIONS

In general 1
 Affidavit 4
 Application 3
 Purpose 2
 Signature 5
 Timeliness of execution 6

1. In general

Particularity is demanded of search warrants and they are to be read without poetic license. *Com. v. Hall* (1975) 323 N.E.2d 319, 366 Mass. 790. Searches And Seizures ☞ 124

This section should be construed to require execution of search warrant within a reasonable time. *Com. v. Cromer* (1974) 313 N.E.2d 557, 365 Mass. 519.

Constitutional and statutory provisions that writs shall bear the teste of the justice of the issuing court are directory only and not mandatory requirements, the absence of which would destroy the validity of a search warrant otherwise correctly issued. *Com. v. Wilbur* (1967) 231 N.E.2d 919, 353 Mass. 376, certiorari denied 88 S.Ct. 1260, 390 U.S. 1010, 20 L.Ed.2d 161. Searches And Seizures ☞ 123.1

2. Purpose

The legislative purpose as disclosed in this section and §§ 2B and 2C of this chapter is to make sure that the Commonwealth can demonstrate by a writing that any given search and seizure was reasonable and was based on probable cause. *Com. v. Monosson* (1966) 221 N.E.2d 220, 351 Mass. 327. Searches And Seizures ☞ 108

3. Application

Presence of assistant attorney general, giving clear official sponsorship to application for search warrant signed by telephone company's "security representative," who was also affiant and supplied basic facts, gave clear official sponsorship to application, thus satisfying essence of claimed requirement that applicant be an officer, not a private individual. *Com. v. Bond* (1978) 375 N.E.2d 1214, 375 Mass. 201. Searches And Seizures ☞ 106

*88784 Since application and search warrant were part of same form and appeared on same side of same piece of paper, requirements of this section that warrant refer to affidavit and name the person who filed it, that it state that applicant had probable cause to believe that property was being used in illegal activities, and that place to be searched and property to be seized be specifically identified, were satisfied where such elements were included in application for the warrant. *Com. v. Mele* (1970) 263 N.E.2d 432, 358 Mass. 225. Searches And Seizures ☞ 123.1

Every effort should be made to draft application for search warrant in accordance with constitutional and statutory requirements but rigors of average criminal investigation are not to be intensified by pecksniffian attention to noncrucial detail on review. *Com. v. Von Utter* (1969) 246 N.E.2d 806, 355 Mass. 597. Searches And Seizures ☞ 105.1

Under circumstances, including fact that police officer told clerk that his informant was participant in robbery, there was sufficient information before clerk to enable him to determine existence of probable cause, and under law existing prior to 1964 act, search warrants were properly issued, notwithstanding fact that applications only recited that officer "believed" that weapons used in commission of robbery and cloth bank bags taken were located on premises to be searched. *Com. v. Owens* (1966) 216 N.E.2d 411, 350 Mass. 633. Searches And Seizures ☞ 114

4. Affidavit

No evidence to support issuance of search warrant may be considered which is not contained in affidavit, even if magistrate issuing warrant was informed of evidence. *Com. v. Brown* (1968) 237 N.E.2d 53, 354 Mass. 337. *Searches And Seizures* ¶109

Where affidavit which furnished basis for search warrant failed to comply with this section and §§ 2B and 2C of this chapter, court could not consider the sworn testimony presented to the magistrate in addition to the information contained in the written affidavit in making its decision as to probable cause for issuance of warrant. *Com. v. Monosson* (1966) 221 N.E.2d 220, 351 Mass. 327. *Searches And Seizures* ¶108

5. Signature

Judge's failure to sign search warrant he intended to issue

did not render unlawful search executed pursuant to warrant, where judge signed affidavit supporting warrant and told officer that warrant was good, and officer, before executing search, told defendant name of judge who authorized warrant. *Com. v. Pellegrini* (1989) 539 N.E.2d 514, 405 Mass. 86, certiorari denied 110 S.Ct. 497, 493 U.S. 975, 107 L.Ed.2d 501. *Searches And Seizures* ¶123.1

*88785 6. Timeliness of execution

In view of this section and 3A of this chapter requiring immediate execution of search warrant and a return of warrant within seven days, no search warrant may be validly executed more than seven days after the issuance. *Com. v. Cromer* (1974) 313 N.E.2d 557, 365 Mass. 519. *Searches And Seizures* ¶145.1

Current through Ch. 20 of the 2005 1st Annual Sess.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04CV11023 RCL, D 2:28

LEON ROBINSON,
Plaintiff

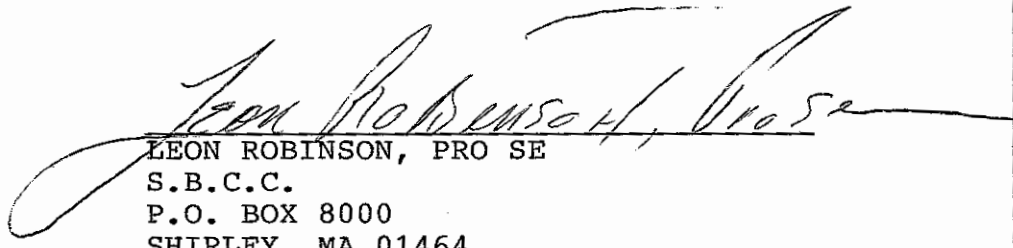
v.

THOMAS MENINO, PAUL F.
EVANS, JAMES WYSE,
MICHAEL PRIMM, JOHN A.
MARTEL, WAYNE ROCK,
GARRETT MITCHELL,
CHARLES HARDY, AMERICAN
BROADCASTING CO., INC.,
HEARST-ARGYLE STATION
INC., WCVB TV (Channel 5,
Boston) DENNIS MCCARTHY
AND JOHN DOE I,
Defendants

CERTIFICATION PURSUANT TO LOCAL RULE 7.1(A)(2)

Pursuant to L.R. D. Mass. 7.1(A)(2), I, plaintiff hereby certify that I have been unable to contact nor communicate with the Defendant(S), and their Attorney(S), as the Plaintiff is currently incarcerated and is without Counsel to communicate with the Defendants, concerning the Plaintiff's Supplemental Motion to Plaintiff's Opposition to the Defendant's Motion to Dismiss the Complaint and therefore I were unable to resolve or narrow the issue prior to filing the above motion.

Respectfully Submitted,
BY THE PLAINTIFF,


LEON ROBINSON, PRO SE
S.B.C.C.
P.O. BOX 8000
SHIRLEY, MA 01464

CERTIFICATE OF SERVICE

I, Leon Robinson, hereby certify that on this 19th day of September, 2005, I served a copy of the forgoing upon:
All of the Defendant(S) Counsel(S) by prepaid first class postage mail to all parties in this Civil case.

DATE: 9/19/05


LEON ROBINSON, PLAINTIFF, W-85592